

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 215 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

HEIRS AND LEGAL REPRESENTATIVES OF DECEASED
BHIALALBHAI ISHWARBHAI PATEL

Versus

PATEL TARUNKUMAR HARIBHAI

Appearance:

MR RN SHAH for Petitioner
MR VC DESAI for Respondent No. 1

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 22/09/2000

ORAL JUDGEMENT

This appeal is filed against the order and judgement of Learned 3rd Extra Assistant Judge of Ahmedabad (Rural) at Narol in Regular Civil Appeal No.144 of 1982, whereby the Learned 3rd Extra Assistant Judge dismissed the appeal of original plaintiff filed against the judgement and decree dated 29th November, 1982 passed by the Civil Judge, Junior Division, Dholka in Civil Suit No.269 of 1982 by which Learned Civil Judge, Junior Division, dismissed the suit of the plaintiff. The original plaintiff, Patel Bhailalbhai Iswarbhai, had instituted the suit, but he died during the pendency of this Appeal and his legal heirs, in his place, as Appellant are impleaded as per the order of this Court in Civil Application No.9341/1999

The subject matter of the litigation was an open plot of land admeasuring 37.4 sq. yards bounded by the boundaries as mentioned in the plaint. The suit was instituted by the Plaintiff on the ground that the said property was owned by them since long and it be declared so. It was also contended that the defendants present respondents be restrained by permanent injunction from interfering with the possession of the plaintiff. During the pendency of the suit, an additional relief came to be claimed by the plaintiff by way of amendment that they have become the owner by adverse possession. In answer to this claim, the defendants contended that the plaintiff had no right, title or interests in the suit and that the plaintiff had never been actually in possession of the suit property at any time. It was further contended by the defendants present respondents that the original owners (1) Manubhai Bhikhabhai (2) Manharbhai Bhikhabhai (3) Haribhai Bhikhabhai and (4) Narayanbhai Bhikhabhai sold the suit land to defendants in consideration of Rs.2900/- by a registered sale-deed dated 8-6-1981 and have given actual physical possession of the suit land to the defendants and since then they are in the physical possession of the suit property.

Trial Court, after recording all the evidence and after hearing the parties was pleased to dismiss the suit of the plaintiff vide his judgement and decree dated 29-11-1982 against which aforesaid Regular Civil Appeal No.144/1982 came to be filed in the Court of the District Judge of Ahmedabad (Rural) at Narol, and the Learned 3rd Extra Assistant Judge dismissed the Appeal of the plaintiff vide his judgement and order dated 30-6-1983. Hence this Second Appeal by the original Plaintiff.

Learned Advocate, Mr.R.N. Shah for the Appellant and learned Advocate Mr.V.C. Desai for the Respondents were heard.

It appears that while admitting the Appeal, no substantial question of law has been framed, but according to this Court, the only substantial question of law, which can be framed according to the facts and circumstances of the case is "whether the Appellant became the owner of the suit Wada by adverse possession?"

Though the question of adverse possession is substantial question of law, even then mainly this substantial question of law is always based upon the facts of the case. Learned Trial Judge, after considering the evidence on record and facts of the case, came to the conclusion that the defendants were the owners of the suit wada, because previously there was a house standing on the land and thereafter this land was sold to the present defendants and the defendants have proved this fact by cogent evidence, while plaintiffs could not adduce any evidence regarding whether they were owners or whether they were in exclusive possession as owners of the suit land for more than 12 years preceding the filing of this suit. Learned Appellate Judge also in this regard came to the conclusion that though there was an evidence of Panchnama of the Commissioner, which denotes that the suit wada is surrounded by the compound wall and gate and the lock of this gate, in the presence of the Commissioner, was opened by the plaintiff. Learned Appellate Judge also observed that on principle of the preponderance of probability the Plaintiff failed to prove that he was in actual and exclusive possession for more than 12 years and that the possession was with the intention to hold as owner and that intention was so overt that would give cause of action to the true owner. Learned Appellate Judge as well as Trial Judge came to the conclusion that there was no ground to believe that the plaintiff had become the owner of the suit property by adverse possession as pleaded by him.

Possession can be presumed by ownership. Defendant has proved ownership by documentary evidence. In the result heavy burden lies on the Plaintiff to prove adverse possession. Plaintiff has not satisfactorily discharged that burden.

Therefore, though the adverse possession is a question of law that has to be decided with the reference to the evidence and the facts and circumstances of the

case, and after taking into consideration the facts of the case, both the Courts below have come to the conclusion that there was no evidence to denote that the plaintiff was in exclusive possession of the suit property for more than 12 years. The findings of both the Courts below require no interference, because the same has been based upon the facts and circumstances of the case.

In the result, the Appeal fails and is hereby dismissed with no order as to costs.

22-9-2000 (J. R. Vora, J.)

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